**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)

Description of case

**Writ petition No. 523 of 2002**

Shiv Raj Singh …… Petitioner.

Versus

State and others……. Respondents.

Date of decision: 21, December 2004

For the approval of:

**Hon'ble Mr. Justice P.C. Pant.**

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the Judgment? (Yes)

**Reserved Judgment**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Writ Petition No. 523 of 2002(M/B)**

**Shivraj Singh S/o Shri Ummed Singh,**
**R/o Village Jaspur, P.O. Jakhcuaura,**
**District Tehri Garhwal & 28 others**

**……. Petitioners**

Versus

1. **State of Uttaranchal,**
   **through its Secretary,**
   **Department of Technical Education,**
   **Govt. of Uttaranchal, Dehradun.**
2. **Technical Education Board, U.P.**
   **I Guru Govind Singh Marg,**
   **Charbagh, Lucknow**
   **Through its secretary**
3. **State Pharmacy Council,**
   **Arif Asiyan - II Floor Chowk Lucknow**
   **Through its Secretary**
4. **Pharmacy Council of India, New Delhi.**
5. **Government Polytechnic College,**
   **Uttarkashi.**

**……. Respondents**

**Mr. Pramood Belwal, learned counsel for the petitioners.**
**Mrs. Bina Pande, learned Standing Counsel for State of U.P.**
**Mrs. Anjali, learned Standing Counsel for Union of India.**

**Hon'ble Prafulla C. Pant, J.**

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioners have sought writ in the nature of mandamus, commanding the respondent No. 3 to issue registration certificates to the petitioners and also directing the State Government to seek approval from the pharmacy Council of India for the recognition of the course passed out by them.

2) Brief facts of the case as narrated in the writ petition, are that the petitioners have passed two years course of Diploma in Pharmacy from Government Polytechnic Urrarkashi, District Uttarkashi, where they got admission in the year 1998-99. They also completed apprentice training as required under Section 10 of Pharmacy Act, 1948. But Uttar Pradesh Pharmacy Council (respondent No. 3) is not registering the name of the petitioners on the ground that the course has not been recognized by the Pharmacy Council of India (for brevity hereinafter P.C.I.). The petitioners have alleged that they were not aware not it was brought to their notice by Board of Technical Education or by the institute that the course is not recognized by the P.C.I. It is further alleged that the petitioners are not responsible for the fault on the part of the respondents.

3) A joint counter affidavit has been filed on behalf of the respondent Nos. 1 and 5 in which a preliminary objection has been raised that the Joint Entrance Examination Borad of Uttar Pradesh is the necessary party as the same has selected the candidates. In parawise reply respondent Nos. 1 and 5 had admitted that petitioners have passed course of diploma in pharmacy from the Government Polytechnic. However, it has been stated in the counter affidavit that the P.C.I. vide its letter dated 20.06.2001 have withdrawn the recognition of Government Polytechnic, Uttarkashi.

4) Respondent No. 4, the Pharmacy Council of India, has filed its separate counter affidavit in which it has been stated that the petitioners have not passed the course recognized by it as required under Section 12(1) of Pharmacy Act, 1948, as such they are not eligible for the registration as Pharmacist. Explaining the object of registration, the P.C.I. in its counter affidavit has categorically stated that everyone cannot be permitted to do the work of Pharmacist as it may affect

adversely the health and life of the public at large. The reasons for de-recognition of the institute in question are mentioned in para 13 of the counter affidavit which includes shortage of teaching staff, requirement of provision of separate Aseptic room / Cabinet and lack of arrangement of pharmaceutical and chemistry laboratory.

5) I heard learned counsel for the parties and perused the affidavits, counter affidavits filed by the parties along with the annexures annexed thereto.

6) It is not disputed between the parties that the petitioners have completed two years course of Diploma in Pharmacy from Government Polytechnic, Uttarkashi. The dispute relates to the recognition and as to the right of the petitioners to get themselves registered as Pharmacists. Learned counsel for the petitioners drew my attention to copy of interim order dated 16.05.2001 passed by Allahabad High Court in writ petition No. 704 (M/S) of 2001 whereby it has been directed that the respondent-State and the Pharmacy Council of the State shall make request to the P.C.I. for recognitions of the Institutions but the interim orders do not contain ratio decendi as to the fact if Diploma holders from the Institute not recognized by P.C.I., have right to be registered as Pharmacists.

7) Relevant provisions of law i.e. Section 12 of Pharmacy Act, 1948 is being reproduced as under:

> "12(1) Any authority in a State which conducts a course of study for pharmacists may apply to the Central Council for approval of the course and the Central Council, if satisfied, after such enquiry as it thinks fit it to make, that the said course of study is in conformity with the Education Regulations, shall

declare the said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists.

(2) Any authority in a State which holds an examination in pharmacy may apply to the Central Council for approval for the examination, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with the Education Regulations, shall declare the said examination to be an approved examination for the purpose of qualifying for registration as a pharmacist under this Act.

(3) Every authority in the State which conducts an approved course of study or holds an approved examination shall furnish such information as the Central Council may, from time to time, require as to the courses of study and training and examination to be undergone, as to the ages at which such courses of study and examination are required to be undergone and generally as to the requisites for such courses of study and examination."

It is also pertinent to mention here that Section 13 of the Pharmacy Act empowers the P.C.I. to withdraw approval in case, approved course of study or examination does not continue to be in conformity with the Education Regulations. Section 13(1) of the Pharmacy Act Empowers the Council to issue notice for withdrawal of approval giving 3 months' time to the institution to represent their case as they may wish to make through the State Government for consideration of the Council and Section 13(2) of the Pharmacy Act empowers to Council to withdraw approval if the Council is not satisfied with the representation.

8) As stated in the counter affidavit of respondent No. 4, in view of guidelines of World health organization, Pharmacy education is a health oriented subject and requires special technical skill. During the course of study of pharmacist, the student is required to be given a vigorous training on all facets of drug i.e. reading of prescription, type of dosage forms, drug formulations, uses, compatibility, in-compatibility, drug interactions, side effects, storage, indications, contra-indications, etc. Such a vigorous and detailed training makes a pharmacist an expert of drugs. With his special and in-depth knowledge about drugs which he attains during a course of study, he is in a unique position in counseling the society and community on drugs i.e. how much doses are to be taken, how the drug is to be taken (for example tetracycline should not be taken with milk), how the dosage timings are to be taken care of in case of antibiotics therapy in order to have optimum blood level concentration, how the drug are to be stored in his own shop to prevent drug deterioration due to atmospheric conditions etc.

9) I agree with the learned counsel for respondent No. 4 that special skill and scientific knowledge is required to sell medicines because any lapse at the retail sale level can adversely affect the public health. An unqualified seller may not know the effect of atmospheric reaction on medicines during storage if exposed to light, air or moisture which can all together alter the properties of the medicines leading to availability of substandard drugs to the patent. With the development of the potent and synthetic drugs, the handling of drugs has become highly crucial as well as complex to safeguard the public health, which is of prime importance. Sometimes the Pharmacist who knows the composition of the

medicine may even refuse to sell the drug and advise the patient to consult medical practitioner again if the composition of the drug may not suite the patient along with other medicines. It cannot be denied that the health of the members of the society is of vital importance. With the industrial and technological development, health hazards have gained new and serious dimensions.

10) In its counter affidavit the respondent No. 4 has given reasons for denial of the registration which are being reproduced as under:

i) Respondent No. 5 institution was not approved under Section 12(1) of the Pharmacy Act, 1948 during 1998-99 academic session of the conduct of the D.Pharma Course and was advised well in advance in the beginning of 1998-99 academic session not to make admissions to D.Pharma course during 1998-99 academic session. Hence the admission made during 1998-99 academic session are in disregard to the provisions of the Pharmacy Act, 1948.

ii) As the course of study which the petitioner have undergone was not approved under Section 12(1) of the Pharmacy Act, 1948, the petitioner were not eligible to sit in the examination under Section 12(2) of the Pharmacy Act, 1948. Therefore, the examination undertaken by the petitioner's are also un-approved and hence the petitioners are not eligible for registration as a Pharmacist.

iii) All the concerned departments i.e. admission making authority, respondent No. 5 institution which conducted an un-approved course of study under Section 12(1) of the Pharmacy Act, 1948 and

Examining Authority i.e. the Board of Technical Education, Lucknow, U.P. which conducted an un-approved examination under Section 12(2) of the Pharmacy Act, 1948 were intimated in June, 1998 itself by the respondent No. 4 not to admit students from 1998-99 academic session.

It is also clear from the perusal of the record that the petitioners themselves have admitted that they are suffering because of the inaction on the part of respondent Nos. 1, 2 and 5 because they have not followed the sub Section (1), (2) and (3) of the Section 12 of the Pharmacy Act, 1948.

11) In view of above discussion, this Court is not inclined to grant writ of mandamus for issuance of registration certificates to the petitioners as they have not passed the course of Diploma in Pharmacy, recognized by the Pharmacy Council of India. The writ petition is accordingly dismissed. No order as to costs.

**(Prafulla C. Pant, J.)**

**Dt.:21th December, 2004**

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